



Billing Code: 3410-XV-U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575-AC99

Reserve Account

Agency: Rural Housing Service, USDA.

Action: Final rule.

SUMMARY: The Rural Housing Service (RHS or "Agency") is amending its regulation to change the requirements of the reserve account for direct Multifamily Housing (MFH) loans. The intended effect of this action is to address the reserve account requirement of the Agency to countersign with the borrower when a Section 538 guaranteed loan is involved, and to also clarify that reserve account funds cannot be used to pay for fees associated with the Section 538 guaranteed loan program.

DATES: The effective date for this final rule is [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue, SW, Washington, D.C. 20250-0781, Telephone: (202) 720-0021 (this is not a toll-free number); e-mail: tammy.daniels@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 - Classification

This rule has been determined to be not significant and, therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the U.S. Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Executive Order 13132 - Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this

rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development (RD) in the development of regulatory policies that have tribal implications or preempt tribal laws. RD has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which RD is not aware and would like to engage with RD on this rule, please contact RD's Native American Coordinator at: AIAN@wdc.usda.gov.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control

number 0575-0189. There are no new reporting and recordkeeping requirements associated with this regulatory action.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the Internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Unfunded Mandate Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RHS determined that the action does not constitute a major Federal action significantly affecting the quality of the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under numbers 10.405 - Farm Labor Housing Loans and Grants; 10.415 - RRH Loans; and 10.427 - Rural Rental Assistance Payments.

Executive Order 12372 - Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

I. Background Information

Reserve accounts are established by the recipient of direct MFH loans (the "borrower") to meet the major capital expenses of a housing project. The amount of the payments to the reserve account is established in the loan documents, beginning with the first loan payment or the date specified in the loan documents. The current requirement at 7 CFR 3560.306(e)(2) states that reserve accounts require the Agency to countersign with the borrower on all withdrawals. The Section 538 Guaranteed Rural Rental Housing (GRRH) program often provides funding to an existing direct MFH loan property. Loan funds provided by the lender and guaranteed by the GRRH program are critical to the rehabilitation and preservation of older existing direct MFH loan properties. The GRRH program regulation at 7 CFR 3565.402(a) requires that all property reserve accounts be held by the lender, which eliminates the unauthorized use of these funds by the borrower since the borrower does not have access to the funds. When an approved Section 538 lender lends funds to an existing direct MFH loan-financed property, this brings 7 CFR 3560.306 and 3565.402 into conflict, pitting the requirement for the Agency to countersign for funds pursuant to 7 CFR 3560.306, against the requirement that lenders have unfettered control of funds consistent with 7 CFR 3565.402. The GRRH program loan guarantees are sold on the secondary market as long as the

loan is closed and is not in default. In most cases, the Section 538 loans on direct MFH loan-financed properties are transferred to Ginnie Mae. Ginnie Mae requires that property reserve accounts be pledged as collateral for the loan and that it has unfettered access to those accounts. In order to meet this secondary market requirement, the reserve accounts must be titled exclusively in the lender's name. In order to meet Ginnie Mae's requirements, the reserve accounts cannot be countersigned with any other party. Requiring the Agency's signature on all withdrawals ensures that the borrower does not have uncontrolled use of the funds and this requirement will remain unchanged for properties that only have direct MFH loans. However, this amendment would relieve the Agency of its countersignature responsibility for properties with Section 538 funding, and thereby comply with Ginnie Mae's requirements, described above. The Agency's interest in the reserve accounts would still be protected by the change being made in the regulation, since the lender is required to get prior Agency approval before funds disbursement. Therefore, funds from the lender-controlled reserve account cannot be used for items not agreed to by the Agency.

Additionally, RHS is amending 7 CFR 3560.306(g) to clarify that reserve account funds cannot be used to pay fees associated with the loan guarantee. Lenders are currently using the replacement reserve account to pay fees associated with the loan guarantee, i.e., the annual renewal fee. These fees are considered a project expense and must be paid from the operating account, not the replacement reserve account.

II. Discussion of the comments received:

The Agency received three responses to the proposed rule published in the Federal Register on August 13, 2014, (79 FR 47383).

The comments came from RD employees who work with the RD Multi-Family Housing programs. The topics of discussion included: putting in language regarding the Section 514/516 Farm Labor Housing program; including all lenders in the amendment, not just Section 538 lenders; and, providing additional guidance on how to implement the new requirements involving direct MFH/538 transactions.

The comments were as follows:

1. One commenter wanted the Agency to address how the release of the reserves will be internally implemented. The Agency will address this in our internal guidance, HB-1-3565, on how to implement reserve requirements on direct MFH loan transactions.

2. One commenter requested that the proposed rule change include language to reflect that the Section 514/516 Farm Labor Housing loan and grant program transactions be included in the final rule. The rule has been changed to reflect that it pertains to all direct Multi-family housing loans; therefore, references to Section 515 loans have been replaced with "direct MFH loans."

3. One commenter requested that the amendment address all lenders, not just Section 538 lenders, when loan funds are leveraged for the construction and/or rehabilitation of project involving direct MFH loans. The agency will not make a change to address all lenders through this regulation change because the change is only intended to resolve the conflict between 7 CFR parts 3560 and 3565. In other words, the Agency will only address transactions involving an approved Section 538 lender. In a direct MFH loan transaction involving lenders other than a Section 538 lender, the rules in 7 CFR 3560.306 will prevail so that the direct MFH loan borrower will maintain control of the reserve account through supervised bank accounts.

List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs - Housing and community development, Government property management, Handicapped, Insurance, Loan programs - Agriculture, Loan programs - Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural housing.

Therefore, chapter XXXV, title 7 of the Code of Federal Regulations, is amended as follows:

Part 3560 - DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart G - Financial Management

2. Amend § 3560.306 by revising paragraph (e) (2) and adding paragraph (g) (5) to read as follows:

§ 3560.306 Reserve account.

* * * * *

(e) * * *

(2) Reserve accounts must be supervised accounts that require the Agency to countersign on all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 GRRH program are used for the construction and/or rehabilitation of a direct MFH loan project. Direct MFH loan borrowers, who are exempted from the

supervised account and countersigned requirement, as described above, must follow Section 538 GRRH program regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

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(g) * * *

(5) Funds from the replacement reserve account cannot be used to pay any fees associated with the Section 538 GRRH loan guarantee, as determined by the Agency.

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Tony Hernandez,
Administrator,
Rural Housing Service.

Dated: May 18, 2015.

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